

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 15-AA-1344

GHUMAN, INC. T/A GOLD STAR CAB, PETITIONER,

v.

DISTRICT OF COLUMBIA
DEPARTMENT OF EMPLOYMENT SERVICES, RESPONDENT,

and

ABIGAIL DENNIS, INTERVENOR.

On Petition for Review of an
Order of the District of Columbia
Department of Employment Services
(CRB-104-15)

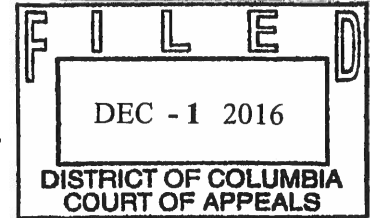
(Submitted October 31, 2016)

Decided December 1, 2016)

Before BLACKBURN-RIGSBY and THOMPSON, *Associate Judges*, and
NEBEKER, *Senior Judge*.

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: Petitioner/Employer Ghuman, Inc., t/a Gold Star Cab (“the Employer”), challenges a decision of the District of Columbia Department of Employment Services (“DOES”) Compensation Review Board (the “CRB” or the “Board”) that upheld a Compensation Order that determined that Hayes Dennis, deceased spouse of Claimant/Intervenor Abigail Dennis, suffered a compensable injury, resulting in death, that arose out of and in the course of his employment, and that Mr. Dennis had a weekly income from the Employer of \$780 at the time of his death. We affirm the CRB’s decision.



I.

The undisputed facts of the case are as follows. At approximately 7:00 p.m. on July 19, 2012, Mr. Dennis was at the taxicab establishment owned by the Employer when an assailant entered the shop and demanded money. At some point during the interaction, the assailant displayed a knife and stabbed Mr. Dennis. Security camera footage from outside the shop shows the assailant fleeing the shop and Mr. Dennis running after him. As a result of Mr. Dennis's injuries, Mr. Dennis was unable to apprehend the assailant and fell to the ground where he remained until an ambulance arrived. He was taken to a hospital, where he was pronounced dead. His death certificate lists the cause of death as a stab wound to the chest.

Thereafter, claimant/intervenor filed a claim for death benefits under the District of Columbia Workers Compensation Act of 1979 ("the Act"). D.C. Code § 32-1509 (2012 Repl.). The Employer contested the claim, arguing, *inter alia*, that Mr. Dennis's death did not arise out of and in the course of his employment. The matter proceeded to an evidentiary hearing before a DOES Administrative Law Judge ("ALJ"), on October 23, 2014, resulting in a May 29, 2015, Compensation Order. The ALJ found that Mr. Dennis was working for the Employer as the manager of the Employer's shop at the time of his death; that his regular working hours were from approximately 9:00 a.m. to 7:00 p.m. (to 8:00 p.m. on occasion), five to six days a week; that his day-to-day duties included taking the Employer's licensed taxicab vehicles to the District of Columbia vehicle inspection facility during its operational hours of 7:00 a.m. to 1:00 p.m. and managing the operations of the shop for the remainder of the day; and that he had keys to the shop and, as part of his managerial duties, was entrusted with opening and closing the shop. The ALJ also found that Mr. Dennis was paid a weekly sum of \$780, "the basis [on] which any death benefits awarded hereunder will be calculated." The Employer appealed the decision to the CRB, which affirmed the Compensation Order, concluding that it was "supported by substantial evidence in the record and . . . in accordance with the law."

In its brief in support of its petition for review, the Employer contends that there was not substantial evidence to support either the determination that Mr. Dennis's injuries were covered by the Act or the ALJ's finding about his weekly income from the Employer.

II.

“In a workers’ compensation case, we review the decision of the Board, not that of the ALJ,” but we “cannot ignore the compensation order which is the subject of the Board’s review.” *Marriott at Wardman Park v. District of Columbia Dep’t of Emp’t Servs.*, 85 A.3d 1272, 1276 (D.C. 2014) (internal quotation marks omitted). “Our standard of review mirrors that which the Board is bound to apply.” *Id.* “[T]he Board was not entitled to consider the evidence de novo or to make factual findings different from those of the ALJ.” *Id.* “Rather, the Board was bound by the ALJ’s findings of fact even if it might have reached a contrary result based on an independent review of the record.” *Id.* The ALJ, not the CRB, is the “judge of the credibility of witnesses[.]” *Jones v. District of Columbia Dep’t of Emp’t Servs.*, 41 A.3d 1219, 1222 (D.C. 2012) (internal quotation marks omitted). “[I]f substantial evidence exists to support the ALJ’s findings, the existence of substantial evidence to the contrary did not permit the Board to substitute its judgment for that of the ALJ.” *Marriott*, 85 A.3d at 1276 (brackets and internal quotation marks omitted). “Substantial evidence is more than a mere scintilla.” *Canlas v. District of Columbia Dep’t of Emp’t Servs.*, 723 A.2d 1210, 1211 (D.C. 1999) (quoting *Dell v. Dep’t of Emp’t Servs.*, 499 A.2d 102, 108 (D.C. 1985) (quotation marks and citation omitted)). This court “will not disturb an agency’s decision if it flows rationally from the facts which are supported by substantial evidence in the record.” *Georgetown Univ. Hosp. v. District of Columbia Dep’t of Emp’t Servs.*, 929 A.2d 865, 869 (D.C. 2007) (internal quotation marks omitted).

III.

We first address the Employer’s contention that substantial evidence established that Mr. Dennis was not on duty at the time of the incident,¹ and thus that his death did not arise out of his employment, and that the CRB erred in concluding otherwise.

¹ The Employer contends that the only reason Mr. Dennis was on the Employer’s premises on the evening in question was to get his personal taxi cab repaired.

D.C. Code § 32-1521 (1) establishes a rebuttable presumption that “the claim [for benefits] comes within the provisions of [the Act].” D.C. Code § 32-1521(1) (2012 Repl.). To trigger the presumption, the claimant must make an initial demonstration of “two basic facts: [1] a death or disability and [2] a work-related event, activity, or requirement which has the *potential* of resulting in or contributing to the death or disability.” *Ferreira v. District of Columbia Dep’t of Emp’t Servs.*, 531 A.2d 651, 655 (D.C. 1987) (emphasis in original) (internal quotation marks omitted). After the claimant makes this initial demonstration, “[t]he presumption [] operates to establish a causal connection between the disability and the work-related event, activity, or requirement,” and “the burden is [then] upon the employer to bring forth ‘substantial evidence’ showing that death or disability did not arise out of and in the course of employment.” *Id.* “There is ‘substantial evidence’ to rebut the presumption where the employer presents ‘circumstantial evidence specific and comprehensive enough to sever the potential connection between a particular injury and a job-related event.’” *McNeal v. District of Columbia Dep’t of Emp’t Servs.*, 917 A.2d 652, 656 (D.C. 2007) (quoting *Ferreira*, 531 A.2d at 655). The presumption is “to be construed liberally for the benefit of employees and their dependents.” *Young v. District of Columbia Dep’t of Emp’t Servs.*, 918 A.2d 427, 429 n.2 (D.C. 2007) (quoting *J.V. Vozzolo, Inc. v. Britton*, 377 F.2d 144, 147 (D.C. Cir. 1967)).

Moreover, the District of Columbia has adopted the “positional-risk test.” *Clark v. District of Columbia Dep’t of Emp’t Servs.*, 743 A.2d 722, 727 (D.C. 2000). Pursuant to this test, “an injury arises out of employment so long as it would not have happened *but for* the fact that conditions and obligations of employment placed claimant in a position where he was injured.” *Id.* This is a “liberal standard which obviates any requirement of employer fault or of a causal relationship between the nature of the employment and the risk of injury.” *Id.* (internal quotation marks omitted). Examples of compensable injuries include “cases of stray bullets, roving lunatics, and other situations in which the only connection of the employment with the injury is that its obligations placed the employee in the particular place at the particular time when he [] was injured by some neutral force[.]” *Id.* (internal quotation marks omitted).

The CRB did not err in determining that there was substantial evidence in the record to support the ALJ’s determination that, under the foregoing test, Mr. Dennis sustained a compensable injury and had a weekly income of \$780. To be sure, the ALJ heard testimony from Pridan S. Ghuman, President of the Employer company, that Mr. Dennis worked for the Employer only part-time from 8:00 a.m. to 2:00 p.m., was paid \$400 every fifteen days, and also drove a taxicab. Other

witnesses gave similar testimony at the hearing and in sworn affidavits about Mr. Dennis's limited hours at the Employer's establishment and taxicab driving, and a copy of Mr. Dennis's cab license (or "face") and taxicab insurance documentation, current at the time of his death, were submitted into evidence. However, the ALJ did not find the testimony of Mr. Ghuman and the Employer's witnesses and affiants credible, stating that Mr. Ghuman's testimony was "contradictory and inconsistent" and that "[t]he evidence presented by Employer's counsel, the exhibits and Employer's witnesses" were "seemingly coordinated and rehearsed," and that "Employer and Employer's witnesses' underlying marital relationships, economic considerations, and influences in this matter [were] entirely too strong to ignore."

In contrast, the ALJ credited the testimony of claimant/intervenor and the other witnesses she called to testify about the circumstances of Mr. Dennis's employment and his work schedule, duties, and salary. Claimant/intervenor testified to her personal knowledge that her husband, as part of his duties as manager, was regularly at the Employer's shop when she called its landline each work day around 7:30 p.m. to let him know that she had arrived safely at her night-shift job. She further testified that she spoke to her husband on the shop's business phone at approximately 6:45 p.m. on the day of the incident. Claimant/intervenor also testified that she had occasion to witness her husband at work after the hour of 1:00 p.m. when she took her friend to the shop around 2:45 p.m. in early 2012 to repair her friend's car, and that she had witnessed her husband closing the shop on July 6, 2012, just two weeks before his death, when she stopped by the shop so that he could drive her to where she needed to catch a bus for an out-of-town trip. While she was waiting for her husband to finish work, she witnessed him completing transactions with customers coming in for business relating to their taxi insurance policies. Claimant/intervenor testified further that while Mr. Dennis owned a taxicab, he was using it as his private vehicle and stopped driving the cab as a means of employment when he started working for the Employer.

Two other witnesses, Kwame Achampong and Olatunde Babayale, gave testimony that corroborated that Mr. Dennis was the manager of the shop and that he closed the shop in the evenings as part of his duties. Mr. Achampong testified that he would come and eat dinner with Mr. Dennis and was regularly with him when he closed the shop around 6:30 or 7:00 p.m., "[s]ometimes even later." Mr. Achampong also provided a detailed explanation of the steps Mr. Dennis would take in order to close the shop and testified that Mr. Dennis "r[an] the shop," doing "everything," including "receiving parts, ordering parts, negotiating prices, cleaning the office, [and] . . . closing the door." Mr. Achampong testified that for

“the last four years, [Mr. Dennis] didn’t drive a cab at all” because he worked for the Employer full-time. Mr. Babayale similarly testified that Mr. Dennis was “[m]anaging the entire operation” at the shop and did not “pick people up on the streets” as a taxi driver. He had seen Mr. Dennis close the shop around 7:00 or 8:00 p.m. on one occasion and had stopped by the shop and seen Mr. Dennis there around 2:00 or 3:00 p.m. about a week before Mr. Dennis’s passing. The ALJ found the testimony of these witnesses to be “factually detailed and credible.”

In addition, the documentary evidence received during the hearing included two letters, written on the Employer’s letterhead, that acknowledged Mr. Dennis as the manager of the shop.

The CRB properly treated the credited testimony and documentary evidence as substantial evidence supporting the ALJ’s determination that Mr. Dennis was the full-time manager of the Employer’s shop, and that the injury that led to his death “would not have happened *but for* the fact that [the] conditions and obligations of employment placed [him] in a position where he was injured.” The Employer’s arguments essentially ask this court to rule that the CRB should have declined to defer to the ALJ’s findings of fact and credibility determinations and should have looked to select pieces of testimony and evidence in order to re-weigh the evidence. That we may not do. As long as there is substantial evidence for the ALJ’s findings, the CRB was not authorized to substitute any different findings it might have made on an independent review of the record.

IV.

The Employer’s remaining contention is that the ALJ’s determination about Mr. Dennis’s weekly wage was not supported by substantial evidence in the record. We again disagree.

In determining Mr. Dennis’s compensation, the ALJ relied on claimant/intervenor’s credited testimony as well as exhibits she submitted. Claimant/intervenor testified that Mr. Dennis was paid \$780 each week in cash, and she submitted a letter on the Employer’s letterhead, signed by Mr. Ghuman²

² Mr. Ghuman disputes that the signature at the bottom of the letter is actually his signature.

and dated April 11, 2007, stating, "This letter is to certify that Mr. Dennis Hayes works for our cab company from Monday thru [sic] Saturday and earns a weekly income of \$780.00." The ALJ also reasoned that payment of only \$400 every fifteen days would be the equivalent of \$26 a day, which the evidence "[did] not support." While the Employer submitted W-2 Forms and Employer's Quarterly Contribution and Wage Reports in support of its claim about the amount of Mr. Dennis's earnings, the ALJ explicitly questioned the credibility of this evidence, stating that "[g]iven Employer's informal paperwork practices and the overall lack of credibility of the Employer witnesses, the facts and evidence do not support the finding that [Mr. Dennis's] income level was as nominal as Employer attempts to document." As to Mr. Dennis's tax returns from the years 2010 through 2012, which Employer offered into evidence, the ALJ reasoned that any failure by Mr. Dennis to report earnings was "not within the purview of the[] proceedings."

Even though there was some evidence to the contrary, there was more than a scintilla of credited evidence to support the ALJ's determination about Mr. Dennis's weekly wage at the time of his death. Accordingly, the CRB did not err in holding that the Compensation Order was supported by substantial evidence in the record.

Wherefore, the judgment of the CRB is

Affirmed.

ENTERED BY DIRECTION OF THE COURT:



JULIO A. CASTILLO
Clerk of the Court